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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,297	06/20/2001	Everett Lee Mitchell	3374-4-1-1	8096
22442	7590	01/13/2004	EXAMINER A, PHI DIEU TRAN	
SHERJDAN ROSS PC 1560 BROADWAY SUITE 1200 DENVER, CO 80202			ART UNIT 3637	PAPER NUMBER

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/886,297	MITCHELL, EVERETT LEE
	Examiner Phi D A	Art Unit 3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 56-89 and 104-112 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 56-89 and 104-112 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>19-20</u> .	6) <input type="checkbox"/> Other: _____

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 56-89,104-112 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claimed limitations “the capillary and drainage holes....above a free end of the capillary break” is indefinite and not enable. The “capillary break” and its “free end” is the same structure. It is not possible for the same structure to be above itself.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 56, 58-60, 62-64, 67-76, 79-87, 104, 106-108, 110-112 are rejected under 35 U.S.C. 102(b) as being anticipated by Ting (4840004).

Ting (figure 2) shows a wall system having at least a first perimeter framing member (19), at least a second perimeter framing member (18, 46), the first and second perimeter framing members engage one another (through the seals 23), wherein at least one of the first and second

perimeter framing members defining a recess relative to exterior surfaces of the first and second panels (17), at least one of the first and second perimeter framing members having a plurality of drainage holes (35, 37), the plurality of drainage holes being in fluid communication with a gutter (34) located in an interior region behind the first and second panels and the first and second perimeter framing members, the gutter collects and provides to the drainage holes moisture located in the interior region for discharge into an exterior environment located exteriorly of the first and second framing members and first and second wall panels, a capillary break (30) positioned on at least one of the framing members, the break is spaced from the plurality of drainage holes and along with the surfaces of the recess defining a circulating chamber (31), whereby entry of terrestrial fluids into at least one of the plurality of holes is impeded, a first space between a free end of the capillary break and an opposing wall of the recess having a first vertical cross section area and a second spaced between opposing walls of a recess at a point between the break and the plurality of holes having a second vertical cross-sectional area and the second vertical cross sectional area is at least about 150% of the first vertical cross sectional area (the distance between the tip of the  $\frac{1}{2}$  arrow and the opposing surface), at any location along the break, an adjacent edge of a nearest drainage hole(32, 35) is at least about 0.25 inch from a rear surface of the break (30), the centers of the plurality of drainage holes (37) lie along a common axis and wherein a distance of the holes above a free end of the break is at least about 125% of a distance from the free end of the break to an adjacent, opposing surface of the recess, the plurality of drainage holes are spaced at regular intervals along the at least one of the first and second framing members, a height of the break (30) ranges from about 125 to about 200% of a distance between a free end of the break and an adjacent, opposing

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surface of the recess, the holes(37) are located on one of the first and second members and the break (30) is located on the other of one of the members, the opening of the holes (37) being located on an at least substantially horizontal surface, the recess having a sloped lower surface (the surface to the left of 35) to permit terrestrial fluids in the chamber to flow along the surface and into the exterior environment and an adjacent edge of a nearest drainage hole being at least about 0.75 inch from the rear surface of the break, a surface of the break adjacent to the plurality of drainage holes being concave (the surface around holes 37) and the first and second wall panels being a composite of metal and plastic, at least most of the fluids pass along the lower surface through the gap and into the terrestrial environment, at least most the fluids do not pass through a gutter during the passing step, the break and the drainage holes being located on a common side of the chamber.

3. Claims 56, 61, 65-67, 69, 77-80, 88-89, 104-112 are rejected under 35 U.S.C. 102(b) as being anticipated by Ting (5452552).

Ting (figure 2a) shows a wall system having at least a first perimeter framing member (21), at least a second perimeter framing member (15,23), the first and second perimeter framing members engage one another (through the seals 28), wherein at least one of the first and second perimeter framing members defining a recess relative to exterior surfaces of the first and second panels (74,71), at least one of the first and second perimeter framing members having a plurality of drainage holes (68,38), the plurality of drainage holes being in fluid communication with a gutter (39) located in an interior region behind the first and second panels and the first and second perimeter framing members, the gutter collects and provides to the drainage holes moisture located in the interior region for discharge into an exterior environment (27) located

exteriorly of the first and second framing members and first and second wall panels, a capillary break (34, 24) positioned on at least one of the framing members, the break is spaced from the plurality of drainage holes and along with the surfaces of the recess defining a circulating chamber (26), whereby entry of terrestrial fluids into at least one of the plurality of holes is impeded, the recess having a downwardly sloped lower surface (23) to permit terrestrial fluids in the chamber to flow along the lower surface and into the exterior environment and wherein an adjacent edge of a nearest hole is at least about 0.75 inch from a rear surface of the break, a surface of the break (24) adjacent to the drainage holes (38) is concave (form by the vertical and the lower curve flange) and wherein the first and second wall panels each is a composite of metal and plastic, the plurality of holes being located on the first perimeter framing member, the openings of the drainage holes being located on an at least substantially vertical surface (at 38) and the openings of the plurality of holes being located above a free end of the break (the free end of the flange at the middle of the break 15, 24), the break having a height and is separated by a gap from the first framing member and the height is at least about 100% of the width of the gap and the exterior surfaces of the first and second wall panels being at least substantially parallel and coplanar, the lower surface of the chamber being free of drainage holes, at least most of the fluids pass along the lower surface through the gap and into the terrestrial environment, at least most the fluids do not pass through a gutter during the passing step, the break and the drainage holes being located on a common side of the chamber.

***Response to Arguments***

1. Applicant's arguments filed 10/15/03 to claims 56-89, 104-112 have been fully considered but they are not persuasive.

As the new limitation is not enabled, applicant's argument to the new limitations to overcome the references are also moot.

***Conclusion***

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different wall structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A *PA*  
January 12, 2004

LANNA MAI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

